IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7883 of 1999

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAGJIBHAI MATHURBHAI GOHIL

Versus

STATE OF GUJARAT

Appearance:

MR ANANT S. DAVE for Petitioner No. 1-10

MR LB DABHI, AGP, for Respondent No. 1

NOTICE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 02/07/2004

ORAL JUDGEMENT

1. This is a case of exploitation by the State which is claiming to be the ideal employer, depriving the legitimate rights of the petitioners which they are entitled under the statutory provisions. The petitioners have prayed for a direction of this Court directing the respondents to pay remuneration to the petitioners for

the services rendered and being rendered by them on public holidays and general holidays including Saturdays and Sundays.

2.1 The petitioners are employees of Police Department. According to them, they are working as sweepers in the Department for the last several years. The petitioners are required to attend to their normal duties not only on working days, but also on Saturdays, Sundays and every public holiday including 15th August and 26th January. The grievance of the petitioners is that they are not being paid for their services rendered on these holidays.

2.2 In spite of the repeated representations, nothing has been done to redress their grievances. In the meanwhile, pursuant to the order passed by this Court in Special Civil Application No.4125/94, in respect of certain Class IV employees, the respondent no.1 had issued a communication dated 15.4.1999 instructing the respondent no.3 to issue appropriate instructions to the officers incharge of the Mounted Police to prepare certain details to enable the Department to make payment of remuneration for the services rendered by Class IV employees of the Mounted Police on public holidays and general holidays. Even then the case of the petitioners have not been considered by the respondents. Hence the petitioners approached this Court by way of the present petition.

3.1 Heard the learned counsel for the respective parties.

3.2 Learned counsel for the petitioner submitted that the petitioners are required to attend to their normal duties not only on the working days, but also on Saturdays, Sundays and every public holiday. However, no remuneration is being paid for such services, which is nothing but exploitation. He further submitted that similarly situated Class IV employees of the Mounted Police Department have already been given such benefits and therefore there is discrimination against the petitioners. The learned counsel submitted that the action of the respondent amounts to permitting extraction of forced labour without paying which is contrary to the concept of the welfare State.

4.1 Learned counsel for the respondent submitted that the services of the petitioner are of civilian nature and are different from other employees. The petitioners are discharging duties of sweeping and cleaning of Police

Line Quarters and the daily routine work and their work of cleaning and sweeping is unavoidable and requires on day-today-basis.

4.2 In the affidavit in reply it is stated that the petitioners are required to clean Police Station and Police Line Quarters and for that very purpose, their set up is decided and according to the said set up, they are required to work and their work is discharged without weekly off. It is also stated that there is no provision for giving wages for working on Saturdays, Sundays and public holidays.

5.1 Learned counsel for the petitioners has drawn my attention to the judgement of this Court in the case of L.M. Chauhan Vs. State of Gujarat in Special Civil Application No.688/1992 dated 12.12.1996 wherein it is held as under:

"6. Equality of treatment before laws being the cherished right of citizens of this country the same shall have to be enforced in the case of PSIs (Armed) and PSIs (Wireless) werving in SRPP they are also required to perform duties on the aforesaid days i.e. 2nd Saturdays, Sundays and Public Holidays and while on duty they are required to work along with their staff in the tents at various places in the State. When the State Government has extended the benefit of additional pay for the additional duties performed by the C.IV employees of SRPF on holidays, Sundays, 2nd and 4th Saturdays, there is no earthly reason as to why same benefits be denied to PSIs (armed) and PSIs (Wireless) of SRPF who are also performing same duties by remaining on arduous duty on 2nd, 4th Saturdays and public holidays and by remaining all throughout in tents. There is no earthly reason as to why such benefit should be denied to PSIs (Wireless) and PSIs (Armed) of SRPF when same benefit is made available to all its C.III and Cl. IV employees. It is required to be noted that ordinarily employees cannot be compelled to work on public holidays, Sundays and 2nd and 4th Saturdays and if their services are required, additional pay for the duties performed by them on such holidays which the other employees of the State are enjoying must be provided by the employer. There does not appear to be any justification for denying the benefits of the aforesaid GR to the PSIs (armed and PSIs

(Wireless). It goes without saying that they should be entitled to get additional pay as and when they are called upon to perform duties on holidays, Sundays, 2nd and 4th Saturdays, Additional pay is to be given for the duties performed by them on the specified days which is referred to hereianbove.

7. In the result, this groups of petitions succeed and the respondents are directed to pay to PSIs (Armed) and PSIs (Wireless) of SRPF additional pay for the duties actually performed by them on 2nd and 4th Saturdays, Sundays and on public holidays. Respondents are directed to comply with the writ of this court within a period of three months from the date of receipt of the same and the office is directed tos end down writ of this court along with the copy of judgement forthwith to the respondents. In the results, this group of petitions are allowed. Rule is made absolute to the aforesaid extent with no order as to costs. Benefits of aforesaid directions of this court are directed to be made available to PSIs (armed) and PSIs (Wireless) of SRPF with effect from 1.1.1993. Even in earlier group of petitioners were conferred from January 1986 but with a view to seeing that no undue financial burden is put on the State exchequer these specific directions are issued to pay additional pay to the PSIs (armed) and PSIs (Wireless) for their performance of duties on 2nd Saturday, 4th Saturday, Sundays and Public Holidays only with effect from 1.1.1993."

6.1 From the facts of the case it is clear that the services of the petitioners are being utilised on Saturdays, Sundays and public holidays, but they are not being paid for the same. It is unfortunate that such things are happening where the citizens of the country have been amply protected by the Constitution of India against the forced labour and exploitation. In fact forced labour, exploitation, etc. have been made offences under the appropriate provisions of law and the persons responsible for committing such offences are liable to be punished. In view of the provisions laid down in the Constitution no public authority much less the Government or its Department can require any person to render service and yet to refuse to pay him the salary and allowances. Therefore the petitioners are entitled to get remuneration for their services being rendered on public as well as general holidays.

6.2 In the result, the petition is allowed. It is held and declared that the petitioners are entitled to get remuneration for their services performed and being performed on public as well as general holidays. The respondents are directed to pay the benefits of this order to the petitioners with effect from 5th October 1996 since the petition is filed on 5th October 1995. The arrears of such payment shall be computed and paid within a period of three months from the date of receipt of writ of this order. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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